able steps to obtain the approval of the Government to purchase the property. I also find that it was no fault of theirs that approval was not given by the Government before the completion date, or for that matter, within a reasonable time thereafter.

For all these reasons, I hold that since approval was not granted by the Government for the plaintiffs to purchase the property and the date for completion, for which time was of the essence, had lapsed, there was no binding contract between the parties. Accordingly, there will be a declaration that the plaintiffs are entitled to the refund of the deposit of $260,000 paid by them to the defendants under the Agreement dated September 24, 1973. I also make an order for payment of the sum of $260,000 together with interest at the rate of 8% per annum from May 16, 1974 to date of judgment and costs. It follows that the defendants' counterclaim for damages for breach of contract must be dismissed with costs.

Claim allowed;

Counterclaim dismissed.

Solicitors: *Foo & Quek; P.C. Tock & Co.*

TAY ENG CHUAN v. PROFESSIONAL ENGINEERS BOARD

[O.C.J. (Chua J.) March 23, 1982]

[Singapore — Originating Motion No. 22 of 1981]

Engineer — Application for registration as professional engineer — Application deferred for one year by Board — Appeal against Board's decision — Whether Board acted in breach of natural justice — Professional Engineers Act (Cap. 255), ss. 5(1)(a), 8(2)(b) & 8(3)(b).

The appellant graduated from the University of Singapore in 1975 with a degree in Civil Engineering. After obtaining his degree he acquired 5 years of practical experience in engineering work at professional level. In May 1981, the appellant submitted an application for registration under section 8 of the Professional Engineers Act, 1970 (the Act) together with a report describing his professional engineering training and experience and all necessary certificates and testimonials. He was interviewed by a Committee of three persons. He failed his interview and was informed that his application had been deferred for one year. His request for a re-interview was rejected by the Registrar of the Board *vide* letter dated May 28, 1981. On June 3, 1981 the appellant's solicitors wrote to the Registrar asking for grounds of Decision and the Notes of Evidence. The Registrar refused this. The appellant applied to the court to reverse, vary or set aside the decision of the Board.

Held, dismissing the application: (1) the Board has a duty to act fairly;

(2) the Board is not required to give any reasons for its rejection of the appellant's application. In the absence of anything to suggest that the Board had been affected by dishonesty or bias or caprice or that there is other impropriety, the Board is entitled to give no reasons for its decision;

(3) in this case, the Board had acted with complete fairness and that all the criticisms of the Board's conduct were without foundation.

Cases referred to:-

(1) *R.* v. *Gaming Board for Great Britain* [1970] 2 All E.R. 528, 533.

(2) *McInnes* v. *Onslow Fane* [1978] 3 All E.R. 211, 218.

ORIGINATING MOTION.

Singa Retnam for the appellant.

L.A.J. Smith (*Goh Joon Seng* with him) for the respondents.

Cur. Adv. Vult.

Chua J.: This is an appeal by Tay Eng Chuan (the appellant) against the decision of the Professional Engineers Board, Singapore, (the Board) deferring the appellant's application for registration as a professional engineer for one year.

The appellant graduated from the University of Singapore in 1975 with a degree in Civil Engineering. He first worked with Mott, Hay & Anderson, John Connell (Pte.), Consulting Engineers, as an engineer. He was with this firm from September 26, 1975, until June 30, 1978, a period of two years and nine months. He then joined Lau Downie and Partners, Consulting Engineers, from December 1978, to April 1980, as a civil and structural engineer. From April 7, 1980, to the present he has been employed by McDermott Engineering Pte. Ltd. as a structural engineer.

In March 1981, the appellant submitted his Application for Registration under section 8 of the Professional Engineers Act, 1970, (the Act), together with (1) a Report of about 2,000 words, as requested by the Board, describing his professional engineering training and experience since graduation (the Report); (2) all necessary certificates and testimonials.

The appellant was interviewed by a Committee consisting of Mr. Ong Chin Lock, Mr. Y.C. Wong and Dr. Saw Choo Ban, on March 24, 1981.

The appellant was informed by the Secretary of the Board that he did not pass his interview and on April 2, 1981, the appellant wrote to the Registrar of the Board (the Registrar) stating that he was dissatisfied with the interview and requested for a re-interview.

The appellant then received a letter dated May 7, 1981, from the Permanent Secretary (National Development) informing him that his application had been deferred for one year to enable him to get more experience at professional level. The appellant's solicitors then wrote to the Registrar on May 20 referring to the letter of the Permanent Secretary and inquiring if that was the decision of the Board and asking for the notes of evidence and grounds of decision to enable the appellant to file an appeal to the High Court. The Registrar replied on May 28 in these terms: —

"Mr. Tay Eng Chuan was found to have inadequate experience at professional level as required under section 8(2)(b) of the Professional Engineers Act, Cap. 255. In the circumstances, the Board decided to defer Mr. Tay's application for registration as a professional engineer for one year from date of the interview to enable him to gain more experience at professional level. At the end of the said period of one year, Mr. Tay will be interviewed again. If he is then found to have gained the requisite experience his registration as a professional engineer will be effected.

In the meantime, I am directed by the Board to inform you that Mr. Tay's appeal for re-interview cannot be acceded to."

On June 3 the appellant's solicitors wrote to the Registrar asking for the Grounds of Decision and the notes of evidence. The Registrar replied on July 2

stating "There is nothing in the Act or in the Rules thereunder to require the provision of Grounds of Decision or Notes of Evidence."

The appellant now moves the court for an order that the said decision of the Board be reversed, varied or set aside. He says that the Board should have registered him and that the Board had not observed the rules of natural justice.

The stand taken by the appellant is this. He is the holder of a Degree of Bachelor of Engineering from the University of Singapore (section 8(1)(a)). After obtaining his degree he has had five years of practical experience in engineering work at professional level in Singapore whereas under section 8(2)(b) he need only have, out of the five years practical experience, two years practical experience at professional level in Singapore. In support of his application for registration he has submitted a Report of about two thousand words, as requested by the Board, describing his professional engineering training and experience since graduation and his work schedule was verified by his employers and ex-employers. He has also submitted two certificates of his good conduct and character and testimonials from his former employers. He has complied with the requirements of section 8 and he is entitled to registration as a professional engineer. The Board has no authority to make him face an interview by a panel of three persons before he is eligible for registration. In his present firm he is a structural engineer "A", the top of the grade in the Company for this post. He has had enough professional experience as required by the Act over the last five years and he must therefore qualify for registration.

As regards the appellant's complaint that he was made to face an interview, he has lost sight of the provision of section 8(3)(b) of the Act which provides that the Board may refuse to register any applicant who is in the opinion of the Board unable to carry out the duties of a professional engineer effectively in Singapore. Is the Board to form an opinion of the appellant only on the Report and testimonials he has submitted? I do not think so. It seems to me that the Board has every right to interview the appellant to examine his working experience and this practice has been followed since the coming into force of the Act in 1971 and must be known to the appellant. It seems to me that there is no other way of carrying out section 8(3) except by an interview.

Then the appellant complains that the interview was not by the Board but by three persons only one of whom is a member of the Board. Rule 8 of The Professional Engineers Board Rules, 1971, provides that the Board may from time to time appoint from its members or from registered professional engineers committees to assist the Board in carrying out its functions under the Act and that every such committee shall report its proceedings and any recommendation which it may make to the Board. So the appointment of the Committee to interview the appellant was perfectly in order.

The appellant says that the Board and the Committee are in breach of natural justice. The appellant says first, a proper record must be placed before the Board for it to come to a proper decision. There was no record and the Board could not have come to a proper decision. Second, that Mr. Ong Chin Lock who sat on the Committee also sat on the Board and influenced the Board's decision so there is a real likelihood of bias. Third, there were no notes of evidence and Grounds of Decision and consequently the appellant does not know on what grounds the Committee came to the conclusion that he was not fit for registration. Fourth, that the interview was a sham. Fifth, that he was asked ridiculous questions at the interview.

Mr. Ong Chin Lock, a member of the Board, in his affidavit states that the Board in each case appoint a committee of three experienced registered engineers to assist the Board in verifying the qualifications and ascertaining through interview the professional experience of an applicant. The Committee's report is then tabled before the Board at its meeting. The Board will then consider the application together with the documents accompanying the application and the Committee's report. If the Board, acting entirely on its own, is satisfied that the applicant qualifies under section 8 the applicant will be registered, except where the application falls under section 8(1)(b) of the Act in which event the registration is effected after the approval of the Minister for National Development is obtained.

Counsel for the Board accepted that refusal to register an applicant by the Board is subject to any requirements of natural justice or fairness which will be enforced by the courts. The question is: What are those rules?

Lord Denning M.R. in *R.* v. *Gaming Board for Great Britain,*[1] said at (page 533):

> "It is not possible to lay down rigid rules as to when the principles of natural justice are to apply; nor as to their scope and extent. Everything depends on the subject matter."

Megarry V-C in *McInnes* v. *Onslow Fane,*[2] said (at page 218):

> "Second, where the court is entitled to intervene, I think it must be considered what type of decision is in question. I do not suggest that there is any clear or exhaustive classification; but I think that at least three categories may be discerned. First, there are what may be called the forfeiture cases. In these, there is a decision which takes away some existing right or position, as where a member of an organisation is expelled or a licence is revoked. Second, at the other extreme there are what may be called the application cases. These are cases where the decision merely refuses to grant the applicant the right or position that he seeks, such as membership of the organisation, or a licence to do certain acts. Third, there is an intermediate category, which may be called the expectation cases, which differ from the application cases only in that the applicant has some legitimate expectation from what has already happened that his application will be granted. This head includes cases where an existing licence-holder applies for a renewal of his licence, or a person already elected or appointed to some position seeks confirmation from some confirming authority: see, for instance, *Weiberger* v. *Inglis; Breen* v. *Amalgamated Engineering Union;* and see *Schmidt* v. *Secretary of State for Home Affairs; R.* v. *Barsnley Metropolitan Borough Council, ex parte Hook.*
>
> It seems plain that there is a substantial distinction between the forfeiture cases and the application cases. In the forfeiture cases, there is a threat to take something away for some reason; and in such cases, the right to an unbiased tribunal, the right to notice of the charges and the right to

be heard in answer to the charges (which, in *Ridge* v. *Baldwin*, Lord Hodson said were three features of natural justice which stood out) are plainly apt. In the application cases, on the other hand, nothing is being taken away, and in all normal circumstances there are no charges, and so no requirement of an opportunity of being heard in answer to the charges. Instead, there is the far wider and less defined question of the general suitability of the applicant for membership or a licence. The distinction is well-recognised, for in general it is clear that the courts will require natural justice to be observed for expulsion from a social club, but not on an application for admission to it. The intermediate category, that of the expectation cases, may at least in some respects be regarded as being more akin to the forfeiture cases than the application cases; for although in form there is no forfeiture but merely an attempt at acquisition that fails, the legitimate expectation of a renewal of the licence or confirmation of the membership is one which raises the question of what it is that has happened to make the applicant unsuitable for the membership or licence for which he was previously thought suitable."

In my judgment the present case is plainly an application case. The authorities are clear that the Board has a duty to act fairly.

It is also clear from the authorities that the Board is not required to give any reasons for its rejection of the appellant's application: See *McInness* v. *Onslow Fane* and *R.* v. *Gaming Board for Great Britain, supra.* In the absence of anything to suggest that the Board has been affected by dishonesty or bias or caprice or that there is any other impropriety, I think that the Board is entitled to give no reasons for its decision.

The appellant complains that at the interview he was asked ridiculous questions. The appellant is being impudent when he attacks the Committee and it appears to me that modesty is obviously not one of his virtues. The truth is that the appellant gave many incorrect answers to questions which were confined to the four projects referred to in the appellant's Report in which he said he was the project engineer. According to Mr. Ong Chin Lock many of the incorrect answers were to questions on elementary and basic engineering principles touching those projects. The members of the Committee are senior members of the profession and of the same discipline of engineers as the appellant. The appellant in his affidavit said that a member of the Committee commented that the Report contained works which he, the appellant, had not actually carried out and that the appellant was lying. The appellant stated that this member of the Committee had no proof of this and that his observation was unfounded.

Counsel for the appellant submits that the Committee should have put the appellant's Report to a proper objective study under the closest scrutiny, for example, his employers under whom he had worked under constant supervision could have been asked to verify whether he was able to carry out the duties of a professional engineer effectively in Singapore. They could also have been asked to put up a confidential report or an open report as to the truth of practical experience. I don't see any reason why the Committee should consult the appellant's ex-employers and present employers. The appellant cannot deny that he gave an incorrect answer when asked about the berthing speed of a vessel when berthing at the deep water jetty built for Prima Ceylon Ltd. at Sri Lanka which the appellant said he did the preliminary design and for which he was the Project Engineer responsible. If a vessel had tried to berth at the speed given by the appellant it would in all probability have demolished the jetty. According to Mr. Ong Chin Lock that was very elementary to a person who has designed a jetty. The Committee indicated to the appellant at the interview that some of his answers might be erroneous and gave him a chance to explain or correct. After the interview the appellant wrote to the Committee clarifying "the following points questioned by the Panel" and expressing regret for the wrong answer he gave for the berthing speed and giving the correct answer. The appellant's answers during the interview gave the Committee the impression that the appellant could not have designed all the structures which he claimed to have done and that even if he had done all those things, he had gained very little knowledge from his experience and the Committee was of the opinion that the appellant was unfit for registration. According to Mr. Ong Chin Lock the period of the interview of an applicant varies, it could be as short as fifteen minutes. A candidate who can answer readily would not be subjected to lengthy questioning. A candidate who is subjected to a long period of interview would invariably be the one who did not answer the questions correctly. In the case of the appellant the interview lasted fifty-five minutes and that according to Mr. Ong Chin Lock would be the longest interview in his experience.

Then it is said that the Board has erred in law on the facts before it by holding it could defer the appellant's application for one year and call the appellant for another interview and thus subjecting the appellant for an indefinite waiting period before his application could succeed.

One of the functions of the Board is to approve or reject applications for registration under the Act or to approve any such applications subject to such restrictions as it may deem fit to impose (section 5). It seems to me that the Board has been kind to the appellant by not rejecting his application outright. It is well within the ambit of the powers of the Board to defer the applicant's application for a year.

Then it is said that there was no proper record before the Board for it to come to a proper decision and that Mr. Ong Chin Lock was biased and had influenced the Board's decision. It is clear that the decision not to register the appellant was the decision of the Board. The complaint of the appellant that there was a breach of natural justice as there was no proper hearing since the Board had made up its mind on the recommendation of the Committee is without foundation. The evidence is that the Board was properly constituted, it considered the report of the Committee and the clarification thereon made by Mr. Ong Chin Lock, who chaired the Committee, and there was a discussion and the Board decided not to register the appellant for the time being as in the opinion of the Board the appellant had not acquired sufficient knowledge from his practical professional experience as would enable him to discharge the duties of a professional engineer effectively. The Board would review the application in a year's time, and if by then the appellant should be found to have acquired sufficient

knowledge from his practical professional experience as would enable him to discharge the duties as a professional engineer effectively, the Board would register him.

I find that the Board has acted with complete fairness and that all the criticisms of the Board's conduct are without foundation.

This motion is dismissed with costs.

Motion dismissed.

Solicitors: *F.C. Pillai & Co.; L.A.J. Smith.*

KIAN CHIANG GRANITE QUARRY CO. PTE. LTD. v. ENG JOO LEE PTE. LTD.

[O.C.J. (Sinnathuray J.) March 19, 1982]
[Singapore — Suit No. 2928 of 1979]

Land Law — Lease for quarrying — Licence to defendants for duration of lease vide 1975 Agreement — Attempt by defendants to obtain renewal of 1975 Agreement to extend lease — Illegality of 1975 Agreement — Sand and Granite Quarries Act (Cap. 282), ss. 4(1), 5(6) & 20(2).

Sand and Granite Quarries — Licence required — Scope of Sand and Granite Quarries Act (Cap. 282), ss. 4, 5(6) & 20(2).

The plaintiffs had a lease of the land from the lessor, the President of the Republic of Singapore, to use and manage the land for the purposes of a granite quarry for a term of 10 years from September 1, 1969. Since the expiration of the lease on August 31, 1979, the plaintiffs had been allowed to continue granite quarrying operations on the land on a TOL on a month-to-month basis from September 1, 1979.

By an Agreement dated May 2, 1975 (the 1975 Agreement) the plaintiffs granted an exclusive licence to the defendants to use and manage the quarry from May 1, 1975 for the duration of the period of the lease granted to the plaintiffs by the Commissioner of Lands. Under clause 7, it was provided that "at the expiration of the present agreement and if the Commissioner of Lands offer a further lease" to the plaintiffs, then the defendants shall be given priority to continue with the existing arrangement subject to the other terms therein. On December 15, 1978 the defendants wrote to the plaintiffs offering renewal of the 1975 Agreement. The defendants in their said letter stated "the above terms are offered subject to the granting of the lease to you by the Commissioner of Lands and other competent authorities". On February 14, 1979, the plaintiffs replied refusing the defendants' offer to renew the 1975 Agreement. Subsequent negotiations between the parties ensued and several issues were raised: (1) whether the 1975 Agreement authorized the plaintiffs or the defendants to use or manage the land at Pulau Ubin for the purposes of a granite quarry (2) whether there was a contract concluded between the parties for the renewal of the 1975 Agreement.

Held: (1) on the facts, no contract was concluded between the parties for the renewal of the 1975 Agreement;

(2) the Sand and Granite Quarries Act (Cap. 282) provides that once a Licensing Officer has issued a licence in respect of a particular quarry, it is the licencee and the licensee alone who must manage, use and operate the quarry. The licensee must have exclusive possession of the quarry, and the licensee must exercise effective control over the persons working on the quarry;

(3) in the present case, the defendants were the ones who managed the land for the purposes of a granite quarry without a licence from the Licensing Officer authorising them so to do. It follows therefore that the 1975 Agreement was rendered unlawful under the Sand and Granite Quarries Act (Cap. 282);

(4) judgment would be given for the plaintiffs for the payment of the arrears due to the plaintiffs from the defendants under the 1975 Agreement; a declaration that the licence granted to the defendant by the 1975 Agreement expired on August 31, 1979 and that the plaintiffs were and had been since such date entitled to possession of the quarry; and for an injunction as claimed and costs;

(5) the defendants' counterclaim was dismissed.

CIVIL SUIT.

Gavin Anthony Lightman Q.C. (*P.T. Wong* with him) for the plaintiffs.

Philip Joseph Cox Q.C. (*Lee Mun Hooi* with him) for the defendants.

Cur. Adv. Vult.

Sinnathuray J.: This trial has taken 29 hearing days. It commenced on January 5, 1981 and was part-heard on two occasions. What appeared on the pleadings to be a case relating to the construction of certain documents has turned out to be a trial in which the evaluation of the oral evidence given at the hearing has become a matter of vital importance. The Notes of Evidence of the witnesses I have recorded exceed 350 typed foolscap pages. The submissions of counsel have taken over four hearing days. Mr. Gavin Lightman for the plaintiffs, and Mr. Philip Cox for the defendants have comprehensively covered the issues of facts and law that arise for decision. Having regard to the course of the proceedings I have described, I am of the view that it is in the interests of everyone that I should give a concise judgment now rather than reserve it and write *in extenso*.

The case relates to a granite quarry in Pulau Ubin. The plaintiffs have a lease of the land from the lessor, the President of the Republic of Singapore, to use and manage the land for the purposes of a granite quarry for a term of ten years from September 1, 1969. The rights and privileges of the President are at all times administered by the Commissioner of Lands. It is not in dispute that since the expiration of the lease on August 31, 1979, the plaintiffs have been allowed to continue granite quarrying operations on the land, until such time the land is required by the Government, on a Temporary Occupation Licence on a month-to-month basis from September 1, 1979.

By an Agreement in writing dated May 2, 1975 (the 1975 Agreement), the plaintiffs granted an exclusive licence to the defendants to use and manage the quarry from May 1, 1975 for the duration of the period of the lease granted to the plaintiffs by the Commissioner of Lands. Under Clause 7 it is provided that "At the expiration of the present agreement and if the Commissioner of Lands offer a further lease" to the plaintiffs, then the defendants "shall be given priority to continue with the existing arrangement" subject to the other terms therein. It is common ground that in law the 1975 Agreement created a licence coupled with an interest in the land.

On December 15, 1978 the defendants' managing director, Mr. Lim Kim Hong (Lim) wrote to the manager of the plaintiffs that the 1975 Agreement will be expiring on August 31, 1979 and offered "our main terms for the renewal of the Agreement". In the penultimate paragraph of his letter, Mr. Lim said: